(9)

No. 88-411

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

EDWARD W. MURRAY, DIRECTOR
VIRGINIA DEPARTMENT OF CORRECTIONS, et al.,

Petitioners,

– against –

JOSEPH M. GIARRATANO, et al.,

Respondents.

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF NATIONAL LEGAL AID & DEFENDER ASSOCIATION, NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, AND CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

STEVEN M. PESNER
Counsel of Record
PETER B. FRIEDMAN
ROBERT H. PEES
ANDERSON RUSSELL KILL & OLICK, P.C.
666 Third Avenue
New York, New York 10017
(212) 850-0738

Attorneys for Amicus Curiae National Legal Aid & Defender Association

EPHRAIM MARGOLIN
NICHOLAS C. ARGUIMBAU
LAW OFFICES OF EPHRAIM MARGOLIN
240 Stockton Street
Third Floor
San Francisco, California 94108
(415) 421-4347

Attorneys for Amici Curiae National Association of Criminal Defense Lawyers and California Attorneys for Criminal Justice

48 pp

No. 88-411

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

EDWARD W. MURRAY, DIRECTOR

VIRGINIA DEPARTMENT OF
CORRECTIONS, et al.,

Petitioners,

v.

JOSEPH M. GIARRATANO, et al.,

Respondents.

MOTION FOR LEAVE TO
FILE BRIEF AMICUS CURIAE

National Legal Aid & Defender Association ("NLADA"), National Association of Criminal Defense Lawyers ("NACDL), and California Attorneys for Criminal Justice ("CACJ") respectfully move this Court for leave to file the attached brief amicus curiae in support of respondents. Respondents have consented to the filing of such a brief. The consent of Petitioners was requested, but Petitioners have withheld their consent.

NLADA is a private, nonprofit organization committed to the provision

of high quality legal services for poor people in the United States. With respect to death penalty litigation, NLADA has promulgated Standards for the Appointment and Performance of Counsel in Death Penalty Litigation, publishes a newsletter focused on trends in all phases of death penalty litigation, and conducts training programs for attorneys in this area. NACDL is a membership organization of criminal defense attorneys from throughout the country dedicated -- through education, legislation and litigation -- to protect the constitutional rights of its members'

clients. Sharing the concerns of NLADA and NACDL, CACJ is the criminal defense bar for the State of California, where almost all of the two hundred men on California's Death Row are indigent and require legal assistance in state post-conviction litigation.

NLADA, NACDL and CACJ are thus particularly well-situated to articulate to this Court the complexities and difficulties unique to post-conviction capital litigation and the benefits, both to the interests of the litigants themselves and to the interests of the judicial system in efficiency and

fairness, of the presence of counsel at all phases of such litigation. These factors, inter alia, provided the basis for the decision below of the United States Court of Appeals for the Fourth Circuit, sitting en banc.

NLADA, NACDL, and CACJ believe that they can provide valuable insights into these factors and illuminate other issues that may not be stressed by the parties. The attached brief emphasizes that capital litigation has always occupied a unique constitutional status, particularly with respect to the assistance of counsel. This unique

status, founded on the practical difficulties of death penalty litigation, the singular finality of the punishment and the consequent demand for heightened procedural safeguards in all phases of capital litigation, requires affirmance of the Fourth Circuit's en banc decision.

Accordingly, NLADA, NACDL and CACJ respectfully request that their motion for leave to file the attached brief amicus curiae be granted.

Dated: January 13, 1989

Respectfully submitted,

Steven M. Pesner
(Counsel of Record)
Peter B. Friedman
Robert H. Pees
ANDERSON RUSSELL KILL & OLICK, P.C.
666 Third Avenue
New York, New York 10017
(212) 850-0738
Attorneys for Amicus Curiae National Legal Aid & Defender Association

Ephraim Margolin
Nicholas C. Arguimbau
LAW OFFICES OF EPHRAIM MARGOLIN
240 Stockton Street,
Third Floor
San Francisco, CA 94108
(415) 421-4347
Attorneys for Amici Curiae National Association of Criminal Defense Lawyers and California Attorneys for Criminal Justice

No. 88-411

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

EDWARD W. MURRAY, DIRECTOR

VIRGINIA DEPARTMENT OF CORRECTIONS, et al.,

Petitioners,

v.

JOSEPH M. GIARRATANO, et al.,

Respondents.

BRIEF OF NATIONAL LEGAL AID & DEFENDER ASSOCIATION, NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, AND CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CONSTITUTION AND STATUTES

MISCELLANEOUS

In our adversarial system of justice, the formidable complexities of death penalty jurisprudence are often entangled in the byzantine intricacies of post-conviction review. In such a system, to face death alone, without the availability of appointed counsel, is cruel, unusual, and a denial of meaningful access to the courts. Accordingly, NATIONAL LEGAL AID & DEFENDER ASSOCIATION, NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, and CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE submit this amicus brief in support of the respondents.

INTERESTS OF THE AMICI CURIAE

National Legal Aid & Defender Association

Founded in 1911, the NATIONAL LEGAL AID & DEFENDER ASSOCIATION ("NLADA") is a private, nonprofit organization committed

to the provision of high quality legal services for poor people in America. NLADA has long recognized the need for competent counsel at all stages of death penalty cases.

In response to the need for quality representation in death penalty cases, NLADA recently adopted Standards for the Appointment and Performance of Counsel in Death Penalty Cases ("NLADA Standards"). The NLADA Standards are an attempt to improve the representation afforded to poor defendants in the high stakes, complex litigation that characterizes death penalty cases.

NLADA also publishes Capital Report, which periodically features articles on trends in the trial, appellate, and post-conviction stages of death penalty cases. In addition, NLADA plans to conduct a training program for attorneys

practicing in states where lawyers in death penalty cases currently receive little or no training.

National Association of Criminal Defense Lawyers

Amicus NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS ("NACDL") and its affiliated organizations have approximately 20,000 members, primarily attorneys who practice criminal defense, from throughout the country. NACDL strives, through public education, legislation and litigation, to protect the constitutional rights of its members' clients as a class, and to assure that the working conditions for lawyers in this field are adequate to permit them to protect their clients' rights in individual cases.

NACDL believes in working for a rational system of review of capital judgments in which the legal issues can be resolved in a thorough and methodical process at as early a stage as possible. NACDL joins in this brief out of a perception that the District Court's order in this case was necessary to preserve indigent convicts' rights and to promote such a thorough and methodical system of review.

California Attorneys For Criminal Justice

Amicus CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE ("CACJ") is the criminal defense bar for the State of California. It has approximately 2100 members. CACJ shares the concerns expressed by NACDL above. Virtually 100% of the approximately two hundred men on California's Death Row are indigent and

require legal assistance in state post-conviction collateral proceedings from appointed or pro bono counsel.

Counsel are routinely appointed in California in a manner consistent with the District Court's order in this case; as a result, the issues are probably more thoroughly reviewed than in other states before cases reach the federal courts. However, although counsel are offered an hourly rate of $60, and California has approximately 80,000 active attorneys in good standing, recruitment of counsel to handle post-conviction collateral proceedings is still difficult, and approximately 20 Death Row inmates are currently unrepresented even on appeal. Accordingly, CACJ joins with amici NLADA and NACDL because the California experience demonstrates that adequate representation of capital convicts and

systematic review of their cases in state post-conviction collateral proceedings is infeasible without a system of routine appointment of counsel.

SUMMARY OF ARGUMENT

The complexities of capital post-conviction proceedings pose formidable difficulties for even experienced lawyers and present virtually insurmountable obstacles for those with little or no legal training. For the poorly educated inmates on America's death row, to confront the intricate maze of death penalty jurisprudence and post-conviction procedure without the assistance of counsel is nothing less than a denial of meaningful access to the courts.

Both Congress and this Court have long recognized the special need for counsel in the unique circumstances of

death penalty litigation. With respect to the necessity of counsel, there remains a significant constitutional difference between capital and non-capital cases.

The presence of counsel in capital habeas proceedings brings needed order to the capital post-conviction process by benefitting not only litigants but also courts in capital habeas proceedings. What is truly at stake in this case is not the finality of Virginia's judgments but rather the high standard of procedural integrity necessitated by the finality of death.

In a capital case, counsel should be available even to those without capital. As a constitutional matter, a poor man requires the assistance of counsel not only when he approaches the steps of the trial courthouse but also when he is

nearest the steps of the gallows; the procedural safeguards of the eighth amendment do not disappear at the stage of litigation closest to the execution date.

ARGUMENT

I. WITHOUT THE CONTINUING ASSISTANCE OF COUNSEL, DEATH ROW INMATES LACK MEANINGFUL ACCESS TO THE COURTS.

A. Capital Post-Conviction Proceedings, Which Are Complex And Difficult For Lawyers And Judges, Are Impenetrable Mysteries For Death Row Inmates.

As organizations deeply familiar with the legal services afforded death row inmates in America, amici reject Petitioners' contention that post-conviction review in capital cases is not so uniquely complex and demanding as to require representation by counsel. Amici have long recognized that a death penalty

case, especially at the post-conviction stage, is an extraordinarily difficult and complicated type of litigation.

Amicus NLADA, for example, warns practitioners that capital post-conviction proceedings can be even more intricate and demanding than the actual capital trial:

> Representing a death-sentenced client in post conviction proceedings is as demanding as -- or, if that is possible, even more demanding than -- the tasks faced by other capital counsel. Especially when a death warrant has been signed, counsel is subjected to demands virtually impossible to meet physically, economically, temporally and emotionally. Seeking to ward off imminent execution while continuing to challenge the validity of the client's conviction and sentence may require filing pleadings almost simultaneously in several courts (often some distance apart). Investigation of factual issues may be necessary, and consultation

> with the client will require counsel's time and presence at yet another location.

NLADA Standards at 13.

NLADA's perspective is widely shared by commentators familiar with death penalty litigation and by judges who have dealt with post-conviction capital proceedings; it is also supported by the uncontradicted record below. Professor Michael Mello, a frequent defender of indigent death row inmates, has observed that those clients "cannot meaningfully pursue post-conviction litigation on their own" and "[e]ven lawyers find capital post-conviction to be among the most complex, nuanced, and rapidly changing litigation." Mello, Facing Death Alone: The Post-Conviction Attorney Crisis on Death Row, 37 Am. U.L. Rev. 513, 531 (1988) (emphasis in original).

After reviewing just some of the complexities facing a habeas petitioner, Professor Mello concludes that the law "would be incomprehensible to the pro se petitioner in the best of circumstances. It is to many lawyers." Id. at 543.

Judges who have dealt with post-conviction capital cases agree. The Honorable John C. Godbold, a Judge of the United States Court of Appeals for the Eleventh Circuit, warns prospective practitioners in the field that "[h]abeas corpus is as unfamiliar to a lot of lawyers as atomic physics, Godbold, "Pro Bono Representation of Death Sentenced Inmates, 42 The Record of the Association of the Bar of the City of New York 859, 863 (November 1987), and that

> A death penalty case will be as difficult and demanding litigation as you will ever participate in. It will require a substantial

> investment of time. The law is difficult. It's complex. It changes every week. Research is tough. The case will be emotionally draining no matter how hard you steel yourself against it.

Id. at 871.

The uncontradicted record amply supports these observations of practitioners, judges and the court below. At trial, plaintiffs' expert John C. Boger, who has monitored America's Death Row since 1978, testified that the complexity and difficulty of capital post-conviction proceedings is such that he had never known a death row inmate capable of representing himself in such matters (Tr. 31-32). He added:

> In matters of legal research, capital cases are particularly difficult, and although some clients are bright and could understand one stage of a proceeding sometimes, and one facet of the criminal law, very few can integrate the

> procedural and substantive and the constitutional questions that are needed in order to make accurate assessments of what issues have merit and what don't.

(Tr. 32-33).

Yet, because of the procedural complexities inherent in this area, an accurate assessment of what issues have merit and what do not is particularly important in the state post-conviction petition, which Mr. Boger identified as "often the most critical single document in the capital litigation." (Tr. at 17) This is particularly true in Virginia, where all claims, the facts of which are known at the time of filing, must be raised in that petition or are lost forever. See Giarratano v. Murray, 847 F.2d 1118, 1120 n.4. (1988)

Empirical data demonstrates the necessity of lawyers in capital post-

conviction proceedings. Although not confined to capital habeas, one study of habeas corpus, commissioned by the Federal Justice Research Program, concluded that there was a "dramatic correlation between counsel involvement and a petitioner's chances for winning relief," including a success rate for represented petitioners fifteen times greater than that for pro se petitioners. Allen, Schachtman & Wilson, Federal Habeas Corpus and its Reform: An Empirical Analysis, 13 Rutgers L.J. 675, 746-47 (1982); see also Robinson, An Empirical Study of Federal Habeas Review of State Court Judgments 58 (1979) (presence of counsel raised success rate from 3% to 12%); Mello at 565-66; NLADA Standards at 5.

In light of the very nature of our adversarial system of justice, such

empirical data is hardly surprising. In a case decided earlier this Term, this Court stated:

> The paramount importance of vigorous representation follows from the nature of our adversarial system of justice. This system is premised on the well-tested principle that truth - as well as fairness - is "best discovered by powerful statements on both sides of the question."

Penson v. Ohio, 57 U.S.L.W. 4020, 4022 (Nov. 29, 1988) (citations omitted). Nowhere is the need for truth and fairness -- and hence the need for vigorous representation -- greater than in capital litigation. Cf. Beck v. Alabama, 447 U.S. 625, 637-38 (1980).

"As a general matter," the Court in Penson stated, "it is through counsel that all other rights of the accused are protected." 57 U.S.L.W. at 4022.

Without the assistance of counsel, death row inmates lack meaningful access to the courts. For the poorly educated death row inmate who is bereft of counsel, habeas corpus is but an empty Latin phrase. Just as the "need for forceful advocacy does not come to an abrupt halt as the legal proceeding moves from the trial to appellate stage," Id., neither does it come to an abrupt halt as a capital case moves to the habeas stage.

The immense complexity, difficulty and importance of capital post-conviction proceedings in our adversarial system of justice should suffice to dismiss any notion that counsel are not crucial to the adjudication of capital habeas proceedings in state courts. Whether on appeal or in a habeas proceeding, contact with the trial attorney may be critical, and "[t]he court, of course, is not in

the position to conduct such ex parte communications." Penson at 4022 n.5. Not only are judges ill-positioned to act as advocates for pro se litigants, but they also require the "powerful statements on both sides of the question" provided by counsel. As Judge Godbold explained in discussing capital habeas cases:

> [W]e [judges] need not feel superior about our knowledge. Much of this law is new_to state trial judges, who are the judges in the trenches trying to apply it. The average state trial judge will see a death penalty case only rarely. I see twelve or fifteen a year. The average state trial judge may see one every two or three years.

Godbold at 865. In short, lawyers are necessary not only for the death row inmate but also for the arbiter determining his fate.

B. The Significant Constitutional Difference Between Death And Lesser Penalties Requires That the Continuing Assistance Of Counsel Be Made Available to the Condemned.

From both a practical and a constitutional standpoint, death differs from lesser punishments. Precisely because death is different, nowhere is the need for the continuing assistance of counsel more acute than in capital cases.

The special need for counsel in the unique circumstances of death penalty litigation is not, as Petitioners suggest, a recent invention but can be traced back to the birth of the republic. In § 29 of the Act of April 30, 1790, the First Congress provided for the appointment of up to two counsel in capital cases.[1] It is surely of no small

1. The statutory descendant of § 29 of the Act of April 30, 1790 is 18 U.S.C. (footnote continued)

significance that the Congress which proposed the Bill of Rights clearly and unequivocally expressed a heightened concern for the assistance of counsel in capital cases. Cf. Marsh v. Chambers, 463 U.S. 783, 794 (1983) (discussing practices of the "same Congress that drafted the Establishment Clause").

When faced with the issue of the availability of counsel, this Court has not hesitated to recognize the unique circumstances surrounding the imposition of society's ultimate penalty. In Powell v. Alabama, 287 U.S. 45 (1932), the Court viewed with a critical eye "the casual

(footnote continued from previous page) § 3005. Apart from the severity and finality of the death penalty, a potential reason for the enactment -- and reenactment -- of this provision is Congress' realization that capital cases are complex. See United States v. Watson, 496 F.2d 1125, 1128 (4th Cir. 1973).

fashion" in which "the matter of counsel in a capital case was disposed of." Id. at 56. In Powell, the Court based its holding on several facts, none of which was more influential and controlling than the fact that the defendants were facing death without the benefit of counsel:

> In the light of the facts outlined in the forepart of this opinion - the ignorance and illiteracy of the defendants, their youth, the circumstances of public hostility, the imprisonment and the close surveillance of the defendants by the military forces, the fact that their friends and families were all in other states and communication with them necessarily difficult, and above all that they stood in deadly peril of their lives -- we think the failure of the trial court to give them reasonable time and opportunity to secure counsel was a clear denial of due process.
>
> [U]nder the circumstances just stated, the necessity of counsel was so vital and imperative that the failure of the trial court to make an effective appointment of counsel was likewise a denial of due process within the meaning of the Fourteenth Amendment.

Id. at 71 (emphasis added); see also Hamilton v. Alabama, 368 U.S. 52, 55 (1961) ("When one pleads to a capital charge without benefit of counsel, we do not stop to determine whether prejudice resulted") (emphasis added).

For the purposes of assessing the need for counsel in death penalty litigation, there is a significant constitutional difference between capital and non-capital cases. For example, even before Gideon v. Wainwright established that the Sixth Amendment's guarantee of counsel is a fundamental right made obligatory upon the states by the fourteenth amendment, 372 U.S. 335 (1963), due process alone was sufficient to require the appointment of counsel in

capital cases. Bute v. Illinois, 333 U.S. 640, 674 (1948). Moreover, in Gideon, the Court did not base its holding on the dubious assumption that there is never a constitutional difference between capital and non-capital crimes. Justice Clark was the sole justice to express the view that the "Constitution makes no distinction between capital and non-capital cases," 372 U.S. at 349, a position that the Court has since explicitly rejected on numerous occasions. See, e.g., Beck v. Alabama, 447 U.S. 625, 637 (1980) ("As we have often stated, there is a significant constitutional difference between the death penalty and lesser punishments").

II. THE FINALITY OF DEATH -- NOT THE FINALITY OF STATE COURT JUDGMENTS -- IS THE CONTROLLING FACTOR IN THIS CASE.

Though Virginia speculates that the appointment of post-conviction counsel will generate a morass of litigation undermining the finality of its judgments, a contrary result is far more likely. Law professors, judges, and practitioners have long recognized that ill-prepared habeas petitions from unrepresented prisoners clog dockets and waste judicial time and energy. Noting that "[c]ourts directly benefit from the fact that most potential litigants first present their problems to competent lawyers who then engage in the necessary investigation and legal research to properly counsel the client in the merits of his case," Judge Lay of the United

States Court of Appeals for the Eighth Circuit wrote that "[t]here would be much merit if we could emulate this practice in the area of post-conviction litigation." Lay, Modern Administrative Proposals for Federal Habeas Corpus: The Rights of Prisoners Preserved, 21 De Paul L. Rev. 701, 734 (1972).

Urging the appointment of counsel in post-conviction proceedings, one law professor recently stated:

> ... 95 percent of all habeas cases are filed by the uneducated prisoners themselves.... Giving prisoners lawyers would not only help assure fairness, but would make the cases clearer, allowing them to be more efficiently, and finally, disposed of.

Kannar, Liberals and Crime, The New Republic 19, 23, (Dec. 19, 1988) (emphasis supplied).

Of course, not only courts benefit from the assistance of counsel; the concentration of judicial efforts on pro se petitions, unassisted by the trained advocates so central to our adversary system, thwarts the vindication of the very rights sought to be protected by post-conviction review. As Justice Jackson warned, "[i]t must prejudice the occasional meritorious application to be buried in a flood of worthless ones. He who must search a haystack for a needle is likely to end up with the attitude that the needle is not worth the search." Brown v. Allen, 344 U.S. 443, 537 (1953) (Jackson, J., concurring); see also Schaefer, Federalism and State Criminal Procedure, 70 Harv. L. Rev. 1, 25 (1956) ("it is not a needle we are looking for in these stacks of paper, but the rights of a human being").

Once taken, life, unlike liberty or property, cannot be restored. The unequivocal finality of execution has a constitutional dimension that cannot be overridden by Virginia's speculations that the finality of its judgments will be somehow diminished. This is a case where the finality of death -- not the finality of state court judgments -- is the preeminent factor.

III. THE PROCEDURAL SAFEGUARDS OF THE EIGHTH AMENDMENT DO NOT EVAPORATE WITH THE ONSET OF POST-CONVICTION PROCEEDINGS.

The eighth amendment regulates not merely the substantive but also the procedural aspects of the death penalty. Ford v. Wainwright, 477 U.S. 399, 405 (1986) ("[T]he Eighth Amendment has been recognized to affect significantly both the procedural and the substantive

aspects of the death penalty"). Invalidating Florida's procedure for ascertaining the sanity of death row inmates, the result in Ford is a telling reminder that the eighth amendment's procedural safeguards do not suddenly disappear after the conclusion of a capital trial and appeal.

Contrary to the assertions of Petitioners (Pet. Br. at 20 n.2), a majority of the Court in Ford did not explicitly -- or even implicitly -- find that the eighth amendment's procedural protections have no application in the context of capital post-conviction proceedings. Though Petitioners contend that Justice Powell's concurring opinion in Ford explicitly rejected the constitutionally-mandated need for heightened procedural safeguards in the post-conviction stages of capital cases

(Pet. Br. at 20 n.2), Justice Powell's concurring opinion contains no such statement, explicit or implicit. Justice Powell merely wrote that this Court's decisions imposing heightened procedural requirements at the trial and sentencing stages do not apply in a context where the only question is not whether, but when, an execution should take place: "This question [of when an execution may take place] is important, but it is not comparable to the antecedent question of whether petitioner should be executed at all". Ford at 425 (Powell, J., concurring). Indeed, the reasoning of Justice Powell's concurring opinion requires the application of heightened procedural safeguards in those post-conviction proceedings where the question raised is whether, rather than when, an execution may take place.

In short, capital habeas petitions, which typically raise the question of whether there should be an execution at all, are entitled to the procedural protections afforded by the eighth amendment, and this Court has never held otherwise.

Although Petitioners describe "state post-conviction review of a state criminal judgment" as a "matter peculiarly committed to the States' authority," (Pet. Br. at 17), state post-conviction proceedings do not occupy a realm beyond the protections of the United States Constitution. For example, in Smith v. Bennett, 365 U.S. 708 (1961), the Court held that a mandatory $4 filing fee was an unconstitutional impediment to indigent state prisoners pursuing state habeas corpus relief in state courts.

Though Petitioners have couched their argument in the lofty terms of states rights and "comity," their real quarrel is with the fourteenth amendment insofar as it incorporates and makes applicable to the states the basic protections of the Bill of Rights. The Fourth Circuit, sitting en banc, did not mandate a "radical departure" from existing law. Petitioners, on the other hand, are essentially proposing a "radical departure" in their effort to carve out an area of state procedure insulated from the Constitutional safeguards that have historically accompanied the imposition of the death penalty.

CONCLUSION

For the above reasons, the decision of the Fourth Circuit, sitting en banc, should be affirmed.

Respectfully submitted,

Steven M. Pesner
(Counsel of Record)
Peter B. Friedman
Robert H. Pees
ANDERSON RUSSELL KILL & OLICK, P.C.[2]
666 Third Avenue
New York, New York 10017
(212) 850-0738
Attorneys for Amicus Curiae National Legal Aid & Defender Association

Ephraim Margolin
Nicholas C. Arguimbau
LAW OFFICES OF EPHRAIM MARGOLIN
240 Stockton Street,
Third Floor
San Francisco, CA 94108
(415) 421-4347

2. Jennifer Cohen, a third-year law student, assisted in the preparation of this brief.

Attorneys for Amici Curiae
National Association of
Criminal Defense Lawyers
and California Attorneys
for Criminal Justice

Dated: January 13, 1989